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# A BILL FOR AN ACT

RELATING TO A SCHOOL FACILITIES AGENCY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Chapter 302A, Hawaii Revised Statutes, is  
2 amended by adding a new subpart to part VI to be appropriately  
3 designated and to read as follows:

4                       "       . School Facilities Agency

5       **§302A-A Definitions.** As used in this subpart, "agency"  
6 means the school facilities agency established by  
7 section 302A-B.

8       **§302A-B School facilities agency; established.** (a) There  
9 is established the school facilities agency, which shall be a  
10 body corporate and a public instrumentality of the State, for  
11 the purpose of implementing this subpart. The agency shall be  
12 placed within the department for administrative purposes only.

13       (b) The governor shall appoint an executive director to  
14 enable the agency to perform its duties. The appointment shall  
15 be:

16       (1) Exempt from chapter 76 and the term limitation in  
17 section 26-34;



1 (2) Subject to the advice and consent of the senate; and

2 (3) For a term of six years.

3 If a vacancy occurs during a term, the governor shall appoint an  
4 executive director for a six-year term that shall begin on the  
5 first date of employment of the new executive director.

6 (c) The executive director shall:

7 (1) Serve as the agency's chief executive officer;

8 (2) Be responsible for carrying out the purposes of the  
9 agency; and

10 (3) Serve on a full-time basis.

11 **§302A-C Powers; generally.** (a) Except as otherwise  
12 limited by this chapter, the agency shall be responsible for all  
13 public school development, planning, and construction related to  
14 capital improvement projects assigned by the legislature,  
15 governor, or board of education.

16 (b) The projects of the agency shall be exempt from  
17 chapters 6E, 37, 76, 103, 103D, and 343 and all county  
18 ordinances except the respective building codes; provided that  
19 the agency shall establish and publish transparency initiatives  
20 as prescribed by the agency to ensure that the public is  
21 properly informed of its activities, to deter fraud and



1 malfeasance, and to allow for public input; provided further  
2 that the agency shall adopt rules that provide substantially  
3 similar protections to those required by chapter 343; provided  
4 further that the creation of the agency shall not affect  
5 existing civil service positions.

6 (c) Any invitation for bids for construction shall specify  
7 that all bids include the name of each person or firm to be  
8 engaged by the bidder as a joint contractor or subcontractor in  
9 the performance of the contract and the nature and scope of the  
10 work to be performed by each. Construction bids that do not  
11 comply with this requirement may be accepted if acceptance is in  
12 the best interest of the State and the value of the work to be  
13 performed by the joint contractor or subcontractor is equal to  
14 or less than one per cent of the total bid amount.

15 Notwithstanding subsection (a), professional services contracts  
16 for licensees under chapter 464 shall be procured in accordance  
17 with section 103D-304.

18 (d) Except as otherwise limited by this chapter, the  
19 agency may also:

20 (1) Have a seal and alter the same at its pleasure;



- 1       (2) Make and execute contracts and all other instruments  
2           necessary or convenient for the exercise of its powers  
3           and functions under this subpart;
- 4       (3) Make and alter bylaws for its organization and  
5           internal management;
- 6       (4) Adopt rules pursuant to chapter 91 with respect to its  
7           projects, operations, properties, and facilities;
- 8       (5) Through its executive director, appoint officers,  
9           agents, and employees, prescribe their duties and  
10          qualifications, and fix their salaries, without regard  
11          to chapter 76;
- 12      (6) Acquire, reacquire, or contract to acquire or  
13          reacquire by grant or purchase real, personal, or  
14          mixed property or any interest therein; to own, hold,  
15          hold title, clear, improve, and rehabilitate and to  
16          sell, assign, exchange, transfer, convey, lease, or  
17          otherwise dispose of or encumber the same;
- 18      (7) Acquire or reacquire by condemnation real, personal,  
19          or mixed property or any interest therein for public  
20          facilities, including but not limited to streets,



1 sidewalks, parks, schools, and other public  
2 improvements;

3 (8) By itself, or in partnership with qualified persons,  
4 including public-private partnerships, acquire,  
5 reacquire, construct, reconstruct, rehabilitate,  
6 improve, alter, or provide for the construction,  
7 reconstruction, improvement, or alteration of any  
8 project; own, hold, hold title, sell, assign,  
9 transfer, convey, exchange, lease, or otherwise  
10 dispose of or encumber any project, and in the case of  
11 the sale of any project, accept a purchase money  
12 mortgage in connection therewith; and repurchase or  
13 otherwise acquire any project that the agency has  
14 theretofore sold or otherwise conveyed, transferred,  
15 or disposed of;

16 (9) Arrange or contract for the planning, replanning,  
17 opening, grading, or closing of streets, roads,  
18 roadways, alleys, or other places, or for the  
19 furnishing of facilities or for the acquisition of  
20 property or property rights or for the furnishing of  
21 property or services in connection with a project;



1       (10) Grant options to purchase any project or to renew any  
2            lease entered into by it in connection with any of its  
3            projects, on terms and conditions as it deems  
4            advisable;

5       (11) Prepare or cause to be prepared plans, specifications,  
6            designs, and estimates of costs for the construction,  
7            reconstruction, rehabilitation, improvement, or  
8            alteration of any project, and from time to time to  
9            modify the plans, specifications, designs, or  
10           estimates;

11      (12) Provide advisory, consultative, training, and  
12           educational services, technical assistance, and advice  
13           to any person, partnership, or corporation, either  
14           public or private, to carry out the purposes of this  
15           subpart, and engage the services of consultants on a  
16           contractual basis for rendering professional and  
17           technical assistance and advice;

18      (13) Procure insurance against any loss in connection with  
19           its property and other assets and operations in  
20           amounts and from insurers as it deems desirable;



1       (14) Contract for and accept gifts or grants in any form  
2               from any public agency or from any other source,  
3               including gifts or grants from private individuals and  
4               private entities;

5       (15) Issue bonds for the purpose of financing any project;  
6               and

7       (16) Do any and all things necessary to carry out its  
8               purposes and exercise the powers given and granted in  
9               this subpart.

10       (e) Prior to project approval, the agency shall consult  
11 with the Hawaii state public library system regarding any  
12 construction or renovation projects for school lands that are  
13 adjacent to or have Hawaii state public library facilities on  
14 them.

15       **§302A-D School facilities board.** (a) There is  
16 established within the department for administrative purposes  
17 only a school facilities board.

18       (b) The school facilities board shall consist of seven  
19 voting members. The superintendent of education, or the  
20 superintendent's designee, and a member of the board of  
21 education selected by the chairperson of the board of education



1 shall serve as ex officio, voting members of the school  
2 facilities board. The other five members shall:

3 (1) Be appointed by the governor pursuant to section  
4 26-34; and

5 (2) Have an interest in school construction.

6 (c) The school facilities board shall advise the agency on  
7 policies relating to public school development, planning, and  
8 construction within the jurisdiction of the agency. The board  
9 shall be responsible for:

10 (1) Advising the agency on preferred strategies to  
11 complete construction projects of the agency; and

12 (2) Evaluating the executive director on an annual basis.

13 (d) The school facilities board shall select a chairperson  
14 by a majority vote of its voting members. A majority of the  
15 voting members serving on the board shall constitute a quorum to  
16 conduct business. The concurrence of the majority of the voting  
17 members serving on the board shall be necessary to make any  
18 action of the board valid.

19 (e) The school facilities board may form workgroups and  
20 subcommittees, including with individuals who are not school  
21 facilities board members, to:





- 1 (1) Obtain resource information from construction and
- 2 education professionals and other individuals as
- 3 deemed necessary by the school facilities board;
- 4 (2) Make recommendations to the school facilities board;
- 5 and
- 6 (3) Perform other functions as deemed necessary by the
- 7 school facilities board to fulfill its duties and
- 8 responsibilities.

9 Two or more school facilities board members, but less than  
10 a quorum, may discuss matters relating to official school  
11 facilities board business in the course of their participation  
12 in a workgroup or subcommittee, and these discussions shall be a  
13 permitted interaction as provided for in section 92-2.5;  
14 provided that all other provisions of chapter 92 shall apply.

15 (f) The school facilities board may testify before the  
16 legislature on any matter related to its duties and  
17 responsibilities.

18 (g) Members of the school facilities board shall serve  
19 without compensation but may be reimbursed for expenses,  
20 including travel expenses, necessary for the performance of  
21 their duties.



1 (h) No member of the school facilities board shall have  
2 any financial interest in any entity that bids on projects  
3 authorized by the agency.

4 (i) No individual shall be appointed as a member of the  
5 school facilities board less than one year after the individual,  
6 or an entity having a financial interest owned by the  
7 individual, has submitted a bid on a project of the agency.

8 **§302A-E Use of public lands; acquisition of state lands.**

9 (a) If state lands under the control and management of another  
10 department are required by the agency for its purposes, the  
11 department having the control and management of those required  
12 lands, upon request by the agency and with the approval of the  
13 governor, may convey or lease those lands to the agency upon  
14 terms and conditions as may be agreed to by the parties.

15 (b) Notwithstanding the foregoing and section 302A-C(c),  
16 no public lands shall be conveyed or leased to the agency as  
17 provided in this section if the conveyance or lease would impair  
18 any covenant between the State or any county or any department  
19 or board thereof and the holders of bonds issued by the State or  
20 county, department, or board.



1 (c) If state lands held by the agency are no longer needed  
2 for school facilities purposes, those lands shall be returned to  
3 the public trust administered by the department of land and  
4 natural resources.

5 **§302A-F School facilities special fund.** (a) There is  
6 established within the state treasury a special fund to be known  
7 as the school facilities special fund into which shall be  
8 deposited:

9 (1) All moneys appropriated by the legislature for any  
10 public school development, planning, or construction  
11 related to a capital improvement project;

12 (2) Revenues pursuant to 302A-1608(a); provided that these  
13 moneys shall be deposited into the appropriate  
14 subaccount established pursuant to subsection (b);

15 (3) Any other moneys received by the department in the  
16 form of a grant, gift, endowment, or donation for any  
17 public school development, planning, or construction  
18 related to a capital improvement project, including  
19 funds transferred to the special fund by the agency  
20 pursuant to subsection (e);



1 (4) All moneys allocated to the special fund by the  
2 governor or board for a project;

3 (5) Any other appropriation by the legislature to the  
4 special fund; and

5 (6) Income and capital gains earned by the special fund.

6 (b) The agency shall establish and appropriately name  
7 subaccounts within the school facilities special fund to accept  
8 deposits of revenues from school impact fees that are required  
9 to be expended within a specific school impact district pursuant  
10 to 302A-1608(a) or restricted to another specific purpose  
11 pursuant to part V, subpart B of this chapter.

12 (c) The school facilities special fund shall be  
13 administered by the agency and used to fund any school  
14 development, planning, or construction project within the  
15 jurisdiction of the agency.

16 (d) Any law to the contrary notwithstanding, the governor  
17 may authorize expenditures from the school facilities special  
18 fund of any donation, grant, bequest, and devise of money from  
19 any private institution, person, firm, or corporation for the  
20 purposes of funding the salaries of the executive director and  
21 any officers, agents, and employees of the agency. If all or



1 any portion of any salary of the executive director or any  
2 officer, agent, or employee of the agency is funded pursuant to  
3 this subsection, the agency shall submit a report to the  
4 legislature detailing the use of any funds authorized under this  
5 subsection no later than twenty days prior to the convening of  
6 the next regular session following the expenditure  
7 authorization.

8 (e) The agency may transfer any other unencumbered or  
9 unrestricted moneys received in the form of grants and donations  
10 for school development, planning, or construction to the school  
11 facilities special fund.

12 (f) The agency shall submit to the director of finance a  
13 report that shall be prepared in the form prescribed by the  
14 director of finance and shall identify the total amount of funds  
15 in the school facilities special fund that will carry over to  
16 the next fiscal year. The agency shall submit the report to the  
17 director of finance within ninety days of the close of each  
18 fiscal year and a copy of the information contained in the  
19 report to the director of finance shall be included within the  
20 agency's report to the legislature pursuant to section 302A-G.



1 (g) Within the school facilities special fund there shall  
2 be established accounts and subaccounts as may be necessary from  
3 time to time in order to ensure compliance with the Internal  
4 Revenue Code, as amended.

5 **§302A-G Annual report.** The agency shall submit to the  
6 governor, the board of education, and the legislature, at least  
7 twenty days prior to the convening of each regular session, a  
8 complete and detailed report of its activities during the prior  
9 fiscal year."

10 SECTION 2. Section 84-17, Hawaii Revised Statutes, is  
11 amended by amending subsection (c) to read as follows:

12 "(c) The following persons shall file annually with the  
13 state ethics commission a disclosure of financial interests:

14 (1) The governor, the lieutenant governor, the members of  
15 the legislature, and delegates to the constitutional  
16 convention; provided that delegates to the  
17 constitutional convention shall only be required to  
18 file initial disclosures;

19 (2) The directors and their deputies, the division chiefs,  
20 the executive directors and the executive secretaries  
21 and their deputies, the purchasing agents and the



1           fiscal officers, regardless of the titles by which the  
2           foregoing persons are designated, of every state  
3           agency and department;

4           (3) The permanent employees of the legislature and its  
5           service agencies, other than persons employed in  
6           clerical, secretarial, or similar positions;

7           (4) The administrative director of the State, and the  
8           assistants in the office of the governor and the  
9           lieutenant governor, other than persons employed in  
10          clerical, secretarial, or similar positions;

11          (5) The hearings officers of every state agency and  
12          department;

13          (6) The president, the vice presidents, assistant vice  
14          presidents, the chancellors, and the provosts of the  
15          University of Hawaii and its community colleges;

16          (7) The superintendent, the deputy superintendent, the  
17          assistant superintendents, the complex area  
18          superintendents, the state librarian, and the deputy  
19          state librarian of the department of education;

20          (8) The administrative director and the deputy director of  
21          the courts;



1 (9) The members of every state board or commission whose  
2 original terms of office are for periods exceeding one  
3 year and whose functions are not solely advisory;

4 (10) Candidates for state elective offices, including  
5 candidates for election to the constitutional  
6 convention, provided that candidates shall only be  
7 required to file initial disclosures;

8 (11) The administrator and assistant administrator of the  
9 office of Hawaiian affairs; [and]

10 (12) The Hawaii unmanned aerial systems test site chief  
11 operating officer[-] and

12 (13) The members of the school facilities board appointed  
13 by the governor."

14 SECTION 3. Section 36-32, Hawaii Revised Statutes, is  
15 repealed.

16 [~~"§36-32 State educational facilities improvement special~~  
17 ~~fund.~~ (a) ~~There is created in the treasury of the State the~~  
18 ~~state educational facilities improvement special fund. The~~  
19 ~~special fund shall be used solely to plan, design, acquire lands~~  
20 ~~for, and to construct public school facilities and to provide~~  
21 ~~equipment and technology infrastructure to improve public~~





~~schools and other facilities under the jurisdiction of the department of education, except public libraries. In addition, activities of the department of education intended to eliminate the gap between the facility needs of schools and available resources shall be eligible for funding from the special fund. Expenditures from the special fund shall be limited to projects authorized by the legislature for fiscal years ending prior to July 1, 2016, and shall be subject to sections 37-31, and 37-33 through 37-40. Appropriations or authorizations from the special fund shall be expended by the superintendent of education.~~

~~(b) There is established within the state educational facilities improvement special fund a separate account, to be known as the lease payments for schools account, for lease payments required by financing agreements entered into prior to July 1, 2013, by the department of education pursuant to this section and sections 37D-2 and 302A-1506. The lease payments for schools account shall be funded by legislative appropriations and expended by the superintendent of education. Expenditures from the lease payments for schools account shall be exempt from chapters 103 and 103D and are restricted to lease~~



1 ~~payments on new schools included within the department of~~  
2 ~~education's current six year capital improvement programs and~~  
3 ~~for which.~~

4 ~~(1) The legislature adopted a concurrent resolution~~  
5 ~~directing the department of education to:~~

6 ~~(A) Build a new school in a specific geographic area~~  
7 ~~using the design build method; and~~

8 ~~(B) Pursue the use of a financing agreement to build~~  
9 ~~the new school; or~~

10 ~~(2) The legislature appropriated planning and design funds~~  
11 ~~and specified that the remainder of the costs~~  
12 ~~necessary to complete the project are eligible for~~  
13 ~~funding through a financing agreement;~~

14 ~~provided that any school to which the legislature has~~  
15 ~~appropriated planning and design funds prior to July 1, 2007,~~  
16 ~~and for which a private developer is willing to enter into a~~  
17 ~~lease-purchase agreement with the department of education within~~  
18 ~~twelve months of July 1, 2007, is exempt from the requirements~~  
19 ~~of paragraphs (1) and (2).~~

20 ~~(c) The department of education shall annually post on the~~  
21 ~~department's website information related to a financial~~



~~statement of the special fund, the lease payments for schools  
account established under subsection (b), and the status of  
projects undertaken pursuant to this section, no later than  
twenty days prior to the convening of each regular session." ]~~

SECTION 4. On the effective date of this Act, any remaining balance in the state educational facilities improvement special fund repealed by section 3 of this Act shall be transferred to the school facilities special fund established by section 1 of this Act.

SECTION 5. Sections 302A-1602, 302A-1603, 302A-1604, 302A-1605, 302A-1606, 30A-1607, 302A-1609, 302A-1610, 302A-1611, and 302A-1612, Hawaii Revised Statutes, are amended by substituting the word "agency", or similar term, wherever the word "department", "department of education", or similar term, appears, as the context requires.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2020-2021 for the establishment of the school facilities agency.

The sum appropriated shall be expended by the school facilities agency for the purposes of this Act.



1       SECTION 7. This Act shall not be construed to transfer the  
2 department of education office of facilities and operation,  
3 including the facilities maintenance branch and auxiliary  
4 services branch and any general fund and position  
5 appropriations, to the school facilities agency.

6       SECTION 8. The development, planning, oversight,  
7 management, and responsibility of the capital improvement  
8 projects authorized by Act 155, Session Laws of Hawaii 2013; Act  
9 115, Session Laws of Hawaii 2015; Act 206, Session Laws of  
10 Hawaii 2017; Act 210, Session Laws of Hawaii 2018; and Act 272,  
11 Session Laws of Hawaii 2019, are hereby transferred to the  
12 school facilities agency.

13       SECTION 9. The school facilities agency shall collaborate  
14 with the department of education and submit a report to the  
15 legislature, no later than twenty days prior to the convening of  
16 the regular session of 2021, identifying positions of the  
17 department of education that should be transferred to the school  
18 facilities agency established by section 1 of this Act,  
19 including positions responsible for public school development,  
20 planning, and construction related to capital improvement  
21 projects along with proposed legislation to further implement



1 the transfer of positions and related records and equipment to  
2 effectuate the purpose of this Act.

3 SECTION 10. In codifying the new sections added by section  
4 1 of this Act, the revisor of statutes shall substitute  
5 appropriate section numbers for the letters used in designating  
6 the new sections in this Act.

7 SECTION 11. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 12. This Act shall take effect on July 1, 2050.



**Report Title:**

School Facilities Agency; BOE; Department of Education;  
Construction; Appropriation

**Description:**

Establishes the School Facilities Agency to be responsible for all public school development, planning, and construction, related to capital improvement projects assigned by the Legislature, Governor, or Board of Education. Places management of school impact fees with the agency. Appropriates funds. Effective 7/1/2050. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

